IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

NO. **77-1843**

JAMES E. HOLSHOUSER, JR., et al.,

Petitioners

v.

THOMAS BOLDING, et al.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Petition misstates the nature and number of the legal issues sought to be reviewed. The Court of Appeals dealt with three issues, the same three raised by the Petitioners herein when they filed this brief with the Fourth Circuit. Those issues are as follows:

I. WHETHER THE COMPLAINT CONTAINS SUFFICIENT FACTUAL ALLEGATIONS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

II. WHETHER THE RELIEF SOUGHT IS WITHIN THE SCOPE OF A PROPER EXERCISE OF THE DISTRICT COURT'S JURISDICTION.

III. WHETHER THE WESTERN DISTRICT OF NORTH CAROLINA IS A PROPER VENUE FOR THIS CLASS ACTION.

STATUTES INVOLVED

This case involves 42 U.S.C. § 1983 and 28 U.S.C. § 1392 in addition to the constitutional provisions mentioned in the Petition.

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is substantially correct although the final paragraph contains a resume of facts which are relevant neither to the issues for review nor the question of whether the Court should grant the petition.

ARGUMENT

Rule 19 of this Court's Rules provides that "review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor". Subsection (b) of that same rule gives some indication of the types of reasons which the Court considers "special and important" enough to justify issuance of the extraordinary writ of

certiorari; and these reasons provide a clear set of standards against which a particular court of appeals decision may be measured. The instant case, when judged against these standards, does not appear at this stage to be of such significance as to justify discretionary review by this Court.

The decision of the Fourth Circuit Court of Appeals did not decide "an important question of federal law which has not been but should be, settled by this Court" (Rule 19). Although the Court of Appeals was constrained to remind the District Court of its duty and jurisdictional authority to protect the constitutional rights of inmates in state prison systems by whatever mode of relief the proof requires, the thing actually decided by the Fourth Circuit was that enough had been alleged in the Complaint to require some further inquiry into the actual facts. The decision involved no more than the application of well-settled rules of pleading to a complaint filed by a group of prisoners who allege their civil rights have been violated. This Court has considered many such cases since the adoption of the Rules of Civil Procedure in

1938 and has announced and reaffirmed on several occasions the test to be applied in passing on the sufficiency of the complaints: "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. "Conley v. Gibson, 355 U.S. 41,46 (1957). See also Cruz v. Beto, 405 U.S. 519, 521 (1972) and Haines v. Kerner, 404 U.S. 519, 521 (1972). This test is in accord with the letter of Rule 8 and the spirit of the rules of pleading have not prevented the district courts from dismissing prisoners' complaints where clearly meritless, nor have the courts of appeals or this Court refused to affirm such action where justified. See Estelle v. Gamble 429 U.S. 97 (1976) and Procunier v. Navarette, 55 L. Ed. 2d 24 (1978). In the instant case a competent panel of judges reviewed the Complaint, applied the test established by this Court, and found the pleading to be sufficient on all but one count. There being no departure from "the accepted and usual course of judicial proceedings" (Rule 19) in cases of this type, no special or important reason appears for reviewing

the decision of the Fourth Circuit Court of Appeals in this case. The courts below will continue to apply the well-settled rules of pleading on a case-by-case basis and this Court will not have departed from its practice of refusing to take cases merely to reaffirm settled law.

Not only does there appear to be no significant federal question raised in this case, the granting of the petition would involve the Court in interlocutory review of a question which might never be presented if the case were allowed to proceed on to a consideration of the merits. Just as it would be meaningless and inefficient for the Court, burdened as it is with a heavy caseload, to take this case for review merely to reaffirm settled law, the interest of judicial economy would be equally ill-served by the Court's departure from its normal practice of denying interlocutory review. The inadvisability of this course of action is discussed by Mr. Justice Stevens in his dissent in Estelle v. Gamble, supra, a case similar to this one. Justice Stevens goes on to say that even "if the Court thought that instead of a pleading question, the case presented an important

constitutional question . . ., allegations of this complaint do not provide the kind of factual basis the Court normally requires as a predicate for the adjudication of a novel and serious constitutional questions - not dealing with pleadings but with administration of the prison system in the State of North Carolina. As Justice Stevens says,"such questions cannot be dealt with without an adequate "factual basis", the sort of basis which can best be tested by a motion for summary judgment (as suggested by the Fourth Circuit) or a trial on the merits.

The only interest that will be served by the Court's review of this case will be the State's interest in delaying discovery and trial. While this delay continues, the overcrowded conditions in North Carolina prisons about which the Respondents complain, continue to worsen. In a prison system designed to hold approximately 10,000 inmates there are now over 14,000 incarcerated. This latter figure represents a dramatic increase of some 2,000 prisoners since the suit was filed a little over two years ago. The Court should not contribute to further worsening of the situation by

granting the Petition and undertaking interlocutory review of an insignificant and well-settled question of law.

The Petitioners seek to make this something more than a simple pleadings question by asserting that the broad injunctive relief sought in the Complaint is so violative of principles of federalism and judicial restraint as to be beyond the authority of the District Court to grant. They rely upon the recent decisions of Rizzo v. Goode, 423 U.S. 362 (1976) and Jones v. North Carolina Prisoner's Labor Union, 433 U.S. 119 (1977). Although the Respondents acknowledge that this Court in Rizzo cautioned against sweeping injunctions directed at state officials, it is their belief that the relief sought in this case would not be violative of the principles restated in Rizzo. As the Court of Appeals points out: "Rizzo does not preclude recourse to broad injunctions when a clear pattern of unconstitutional conduct has been established". [A.p.A-10]. In fact, the Court specifically reaffirmed in Rizzo the exercise of federal injunctive power in the case of Swann v. Charlotte-Mecklenburg Board of

Education 402 U.S. 1 (1971), where school board administrators and board members were found by their own conduct in the administration of the school system to have violated the rights of minority students. Moreover, the Rizzo decision did not overrule Procunier v. Martinez, 416 U.S. 396 (1974), where the Court held:

> "But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights."

416 U.S. at 405-06. This principle was reaffirmed in Bounds v. Smith, 430 U.S. 817 (1977), decided after Rizzo, where the Court was presented (by the State of North Carolina interestingly) with the same argument that the federal courts should not sit as "co-administrators of state prisoners" and that the District Court had "exceeded its powers" in doing so in that case.

The relief sought in this case is no broader than that sought and granted in the similar case of Newman v. Alabama, 559 F. 2d 283 (5th Cir. 1977), cert. den. 46

U.S. L. Week 3803 (July 3, 1978). As noted by the Fourth Circuit, it remains to be seen whether the Respondents can adduce in this case the proof which will require such relief. But the decisions of this Court clearly mandate broad injunctive relief where the constitutional violations are equally clear. See Swann v. Charlotte-Mecklenburg Board of Education, supra, Hague v. CIO, 307 U.S. 406 (1939); and Allee v. Medrano, 416 U.S. 802 (1974). Therefore, it appears that a determination as to the appropriateness of the relief granted in a particular case should, indeed must, await the development through proof of the "factual basis" referred to by Justice Stevens in his dissent in Estelle v. Gamble, supra. For it cannot be said at this juncture that the Respondents can prove no set of facts in support of their claims which would entitle them to the relief sought. See Haines v. Kerner and Conley v. Gibson, supra. It is clear then that the District Court has the power to effectuate by injunctive relief the changes in the North Carolina prison system sought by the Respondents, if the prisoners meet their burden and prove the constitutional violations

alleged. Just as it was inappropriate for the District Court to decide that it lacked the "judicial power" to grant the relief sought, it would be ill-advised for this Court to prematurely review, without an adequate factual basis, the question of whether broad equitable relief should or should not be granted in this case.

The question of venue brought forward in the Petition is meritless in the opinion of the Respondents. 28 U.S.C. & 1392 (a) quite clearly covers the fact situation presented here and leaves no room for dispute. Review of this issue would be pointless and a waste of the Court's time.

CONCLUSION

It is respectfully submitted that the Petitioners have wholly failed to sustain their burden of establishing that there are special and import reasons why the extraordinary writ should be granted. The ruling of the Court below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Court of Appeals for the Fourth Circuit decided a federal question in a way

to conflict with applicable decisions of this Court or of another Court of Appeals on the same matter. The Court of Appeals correctly reversed the District Court and correctly applied well-settled law in so doing. There is no issue of significance to be reviewed by this Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 1978, three copies of this Brief were served upon Jacob L. Safron, Special Deputy Attorney General, and James Peeler Smith, Assistant Attorney General, by mailing copies therof, postage prepaid, to the Office of the Attorney General of North Carolina, Post Office Box 629, Raleigh, North Carolina 27602.

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